IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4931 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAJESH KISHANBHAI SHARMA

Versus

THE COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 4931 of 2001

MR CHETAN B RAVAL for Petitioner No. 1

MR KT DAVE AGP for Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 28/08/2001

ORAL JUDGEMENT

1. In exercise of the powers conferred in him under Section 3 (2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ('the Act' for short), Commissioner of Police, Ahmedabad City, Ahmedabad, has vide order dated December 5, 2000, Annexure A to the petition,

detained the petitioner - detenu.

2. Averments made in the petition and the grounds of detention manifest that the detaining authority considered the petitioner as a bootlegger within the meaning of section 3 (2) of the Act and as one case under the Bombay Prohibition Act is registered against the petitioner which is still pending in which statements of two witnesses were recorded, the detaining authority considered the activities of the petitioner as detrimental to the public order and hence powers under section 9 (2) of the Act were exercised by the detaining authority for detaining the petitioner.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the order of detention on various grounds and prayed to issue a writ of mandamus or any other appropriate writ, order or direction quashing and setting aside the impugned order of detention and prayed to set him at liberty forthwith.

4. The petitioner has challenged the impugned order of detention on various grounds. However, Mr. Raval, learned advocate for the petitioner, has restricted his arguments to the fact that the subjective satisfaction recorded by the detaining authority for exercising powers under Section 9 (2) of the Act cannot be considered as genuine. In order to substantiate his submissions, reliance is placed on the statements of two witnesses which were recorded on December 3, 2000 and verified by the detaining authority on December 4, 2001 and contended that immediately on the next day, that is, on December 5, 2000 the order of detention came to be passed. Therefore, it can be said that the detaining authority has not exercised powers under Section 9 (2) of the Act properly as he had no sufficient time to examine the statements of the witnesses.

5. Mr. K.T. Dave, learned AGP who appears on behalf of the respondents has not disputed the factual aspects of the matter and the contention of the petitioner that after verifying the statements of the witnesses immediately on the next day the order of detention came to be passed. He, therefore, urges that appropriate orders may be passed on the basis of the material on record.

6. Similar question arose before a Division Bench of this Court in the case of Kalidas Chandubhai Kahar v. State of Gujarat 1993 (2) GLR 1659 where the statements of the witnesses were recorded on 16.10.1992 and order of

detention was passed on 17.10.1992 and the Division Bench of this Court has observed that the powers under Section 9 (2) of the Act were improperly exercised and was held to be detrimental to the right of the detenu to make an effective representation contemplated under Article 22 (5) of the Constitution and, therefore, the detention order was quashed. Applying the principles laid down by the Division Bench of this Court in the case of Kalidas (supra) to the facts of the present case, it is clear that the present case is identical to the case referred to above. At the cost of repetition, be it stated that the statements of the witnesses were recorded on December 3, 2000 which were verified on December 4, 2000 and the order of detention came to be passed immediately on the next day, i.e., December 5, 2000 and, therefore, the order of detention stands vitiated as the detaining authority had no sufficient time to examine the statements of the witnesses.

7. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention, Annexure A to the petition passed against the petitioner - detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

28.8.2001. (A.M. Kapadia, J.)

(karan)